

APPEAL NO. 040800  
FILED JUNE 1, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 8, 2004. The hearing officer decided that: (1) the respondent/cross-appellant (claimant) did not sustain an injury in the course and scope of her employment on \_\_\_\_\_; (2) the appellant/cross-respondent (carrier) waived its right to contest compensability of the claimed injury by not timely disputing the injury in accordance with Section 409.021; (3) the carrier is not relieved from liability under Section 409.002, because the claimant timely notified her employer of an injury pursuant to Section 409.001; (4) the carrier is not relieved from liability under Section 409.004, regarding failure to file a claim for compensation, due to carrier waiver; (5) the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy; and (6) the claimant had disability beginning October 25, 2003, and continuing through the date of the hearing. The carrier appeals the hearing officer's waiver, notice, claim for compensation, election-of-remedies, and disability determinations on legal and sufficiency of the evidence grounds. The claimant urges affirmance of these determinations. The claimant cross-appeals the hearing officer's course and scope determination on sufficiency of the evidence grounds. The claimant also asserts an additional basis in support of the hearing officer's claim for compensation determination. The carrier responded, urging affirmance of the course and scope determination and rearguing its appeal with regard to the claim for compensation issue.

DECISION

Affirmed.

**COURSE AND SCOPE**

The hearing officer did not err in determining that the claimant did not sustain an injury in the course and scope of her employment on \_\_\_\_\_. This determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

## WAIVER

The carrier asserts that it did not waive its right to dispute the claimed injury under Section 409.021, because the claimant did not sustain an injury in the course and scope of her employment. The carrier cites Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.). In Williamson, the court held that “if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier’s failure to contest compensability cannot create an injury as a matter of law.” The Appeals Panel has recognized that Williamson is limited to situations where there is a determination that the claimant had no injury, as opposed to cases where there is an injury which was determined by the hearing officer not to be causally related to the claimant’s employment. Texas Workers’ Compensation Commission Appeal No. 020941, decided June 6, 2002. We read the hearing officer’s decision as stating only that the claimed injury is not a result of the claimant’s work. Accordingly, the hearing officer properly concluded that the carrier waived its right to dispute the claimed injury under Section 409.021.

## NOTICE, CLAIM FOR COMPENSATION, AND ELECTION OF REMEDIES

The hearing officer did not err in making the complained-of notice, claim for compensation, and election-of-remedies determinations. By failing to comply with Section 409.021, a carrier loses its right to contest compensability, which includes its right to assert a defense under Sections 409.002 and 409.004 and election of remedies. Texas Worker’s Compensation Commission Appeal No. 022027-s, decided September 30, 2002; Texas Worker’s Compensation Commission Appeal No. 022091-s, decided October 7, 2002; and Texas Worker’s Compensation Commission Appeal No. 030793-s, decided May 16, 2003. We decline to reconsider our prior holdings at this time.

## DISABILITY

The hearing officer did not err in determining that the claimant had disability beginning October 25, 2003, and continuing through the date of the hearing. This determination involved a question of fact for the hearing officer to resolve. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the evidence presented, we cannot conclude that the hearing officer’s determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge